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## **Key issues concerning the employment of third-country workers in Hungary – new rules on "labour imports"\***

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### **Abstract**

*As Hungary faces increasing labour demands, the number of migrant workers from non-EU countries has increased significantly. The aim of this paper is to present recent Hungarian legislative measures in the field of immigration and labour law that respond to the problems raised by third-country workers and also to highlight some Corporate Social Responsibility/Responsible Business Conduct aspects of the employment of third-country nationals in Hungary. While the new legislation seeks to address labour market needs and maintain social cohesion, challenges remain, particularly in protecting employees' rights and promoting responsible business practices.*

### **Keywords**

*third-country workers, immigration law of Hungary, Corporate Social Responsibility, Responsible Business Conduct*

## **1. Introduction**

The significant labour shortages in Hungary in recent years have led to an increasing number of migrant workers, especially from third countries. This form of immigration has become an economic necessity, as the labour market is unable to meet the demand for labour, especially in areas requiring manual labour. Since 2013, the number of third-country nationals (hereinafter: TCNs) residing in Hungary has been steadily increasing. Although there was a temporary decline in 2021 due to the COVID-19 pandemic, the numbers have subsequently started to increase again.<sup>1</sup> According to the Hungarian Central Statistical Office (hereinafter: HCSO), the number of employed TCNs in January 2024 was 97,600, which is 12,400 more than in the same period of the previous year.<sup>2</sup> According to statistics from the National Directorate-General for Aliens Policing<sup>3</sup> (hereinafter: NDGAP), the largest number of migrant workers come from

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<sup>1</sup> Takács, F.B. (7 May 2024.). Új "kódex" a bevándorlási jog területén. *Jogászvilág (Online)*. <https://jogaszvilag.hu/cegvilag/uj-kodex-a-bevandorlasi-jog-teruleten/>.

<sup>2</sup> Elképesztő ütemben érkeznek Magyarországra a vendégmunkások. (17 April 2024.). *Portfolio (Online)*. <https://www.portfolio.hu/gazdasag/20240417/elkepeszto-utemben-erkeznek-magyarorszag-a-vendegmunkasok-681021>.

<sup>3</sup> The website of NDGAP is available: <http://oif.gov.hu/index.php?lang=en>.

neighbouring and other European countries and Asia (mainly the Philippines, Vietnam and Kyrgyzstan).<sup>4</sup>

Attracting foreign labour to alleviate labour shortages can have positive economic effects by helping to maintain production capacity, contributing to economic growth and providing employers with the labour they need. However, this trend also poses serious social and integration challenges, especially when migrant workers arrive in large numbers and at a rapid pace. Furthermore, the increased presence of migrant workers in the domestic labour market may have a negative impact on the wage levels and working conditions of domestic workers, as third-country workers typically take jobs for lower wages. Therefore, the increase in the number of migrant workers poses complex challenges to which the legislator needs to respond in an integrated and multifaceted way to ensure both social cohesion and economic stability.<sup>5</sup>

The aim of this paper is to present recent Hungarian legislative measures in the field of immigration and labour law that respond to the problems raised by third-country workers and also to highlight some Corporate Social Responsibility (hereinafter: CSR)/Responsible Business Conduct (hereinafter: RBC) aspects of the employment of TCNs in Hungary. Section 2 presents the new legal framework introduced in 2023 in Hungary, which regulates the duration of stay for TCNs. Section 3 details the types of residence permits that may be issued to TCNs for the purpose of employment. Section 4 deals with the process for obtaining these permits, focusing on the single application procedure (hereinafter: SAP). Section 5 examines the legal restrictions on fixed-term contracts, with a particular focus on TCNs, whose employment is subject to more stringent conditions. Section 6 addresses the concerns raised by Hungarian trade unions, which advocate for stronger protections for domestic workers in light of the increasing employment of TCNs. Section 7 highlights the importance of CSR and RBC in the employment of TCNs. Section 8 concludes and emphasises that Hungary's growing demand for labour has led to the need for a regulated and integrated approach to employing TCNs. While the new legislation seeks to address labour market needs and maintain social cohesion, challenges remain, particularly in protecting employees' rights and promoting responsible business practices.

## 2. Duration of Stay in Hungary

In view of the trend mentioned in Section 1, the new code of immigration law, Act XC of 2023 on the General Rules for the Entry and Residence of TCNs (hereinafter: Btátv.) was promulgated on 21 December 2023 and entered into force on 1 January 2024. This Act has substantially adapted the rules on residence permits when compared to the previous code, Act II of 2007 on the Admission and Right of Residence of TCNs.

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<sup>4</sup> Brochure, statistics 2023 of NDGAP. [http://oif.gov.hu/index.php?option=com\\_k2&view=item&layout=item&id=492&Itemid=1259&lang=en](http://oif.gov.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en).

<sup>5</sup> Időszaki szakik. (20 June 2024.) HVG360 (Online). <https://m.hvg.hu/360/hetilap360/2024/25/20242514gazdasag1>

A relatively short law<sup>6</sup> on the employment of guest workers in Hungary was adopted and promulgated in November 2023 but was not ultimately implemented.<sup>7</sup> The main regulatory difference between the Btátv. and the "repealed" legislation is that while the repealed legislation only intended to regulate the conditions of residence of guest workers, the justification of the Btátv. emphasises that the new, comprehensive Act aims at "[...] establishing a regulated framework for the stay and employment in Hungary for a certain period and for a certain purpose".<sup>8</sup> To achieve this objective, the Btátv. regulates the legal titles of residence in Hungary in a fundamentally new system, the main regulating principle of which is the duration of residence. Based on this principle, the Act distinguishes between short-term (not exceeding ninety days within any one hundred and eighty days),<sup>9</sup> long-term (exceeding ninety days within any one hundred and eighty days) and permanent (as a rule, indefinite)<sup>10</sup> residence in Hungary.<sup>11</sup> Of particular importance for this study is the system of long-term residence in Hungary, which has been completely revised in the Btátv. As a legal policy goal, the Act stipulates that the long-term stay of a TCN in Hungary must always be purposeful and subject to authorisation. The permit entitling the holder to stay in Hungary is valid for a limited period and is linked to the legal titles defined in the Btátv. Long-term residence may be limited according to nationality, number of persons or occupational criteria.<sup>12</sup>

### 3. Types of Residence Permits for Employment Purposes

Paragraph b) of Subsection (1) of Section 6 of Btátv. defines the legal titles of residence for the purpose of employment of guest workers. According to this provision, TCNs may reside in Hungary for employment purposes as guest workers with a residence permit for the purpose of seasonal employment, residence permit for employment for the purpose of investment, residence permit for the purpose of employment and residence permit for guest workers.

a) A residence permit for the purpose of seasonal employment may be granted to a guest worker who wishes to undertake seasonal work. In this respect, seasonal work is an activity in the agricultural sector that is linked

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<sup>6</sup> Act L of 2023 on the employment of guest workers in Hungary.

<sup>7</sup> Government Decree 462/2023 (X. 5.) on emergency measures for the protection of the labour market and the population of Hungary.

<sup>8</sup> General justification of Btátv.

<sup>9</sup> Hungary allows the short-term residence of TCNs based on European Union rules (Section (3) of Btátv.).

<sup>10</sup> Long-term residence may be permitted if the conditions set out in the Btátv. are met, if the TCN is familiar with the conditions of social coexistence and complies with them (Section (5) of Btátv.).

<sup>11</sup> Fülöp, A. (16 January 2024). Rövid, tartós, huzamos tartózkodás Magyarországon: új szabályok a harmadik országbeli állampolgárok vonatkozásában, megmarad a digitális nomádok Fehér Kártyája. *Jogászvilág (Online)*. <https://jogaszvilag.hu/szakma/rovid-tartos-huzamos-tartozkodas-magyarorszagon-uj-szabalyok-a-harmadik-oroszagbeli-allampolgarok-vonatkozasaban-megmarad-a-digitalis-nomadok-feher-kartyaja/>.

<sup>12</sup> Subsections (2) to (3) of Section 4 of Btátv.

to a certain period of the calendar year, due to a recurring event or series of events linked to the conditions of that season, when a much larger number of workers are needed for operations that normally take place. This residence permit is valid for a maximum period of six months, which may be extended for a period not exceeding six months within twelve months.<sup>13</sup>

b) A residence permit for employment for the purpose of investment may be granted to a guest worker whose purpose is to perform actual work for or under the direction of others, for remuneration, under a contract for employment relationship to implement an investment, whose employer has concluded an agreement or contract with the minister responsible for foreign economic affairs acting on behalf of the government (or has accepted the offer of support, in order to implement this investment), and whose employer has a prior approval for group employment defined by law (an official promise to employ a specified number of guest workers for a specified period to implement the investment).<sup>14</sup> The prior approval for group employment is issued by the minister responsible for the employment of TCNs in Hungary in accordance with Sections 15/A to 15/B of Government Decree 445/2013 (XI. 28.) on the Authorisation of Employment of non-EU Nationals in Hungary not on the basis of SAP; the exemptions of such authorisation obligation; the involvement of the metropolitan and county government offices as opinion makers in SAPs; the notification of employment of non-EU nationals' authorisation for free employment in Hungary and salary reimbursement (hereinafter: Government Decree 445/2013 (XI. 28.)). This residence permit entitles the holder to reside in the territory of Hungary until the realisation of the investment, but for a maximum period of three years.<sup>15</sup>

c) A residence permit for the purpose of employment may be granted to a guest worker whose purpose of residence is to perform actual work for or under the direction of others, for remuneration, under contract for employment relationship, or whose employment is based on an existing employment relationship with an employer established in a third country, to fulfil an agreement concluded with a Hungarian employer. To ensure the protection of the domestic labour market and the priority of Hungarian employees in certain occupations, the minister responsible for employment policy may specify in a Communication<sup>16</sup> the occupations for which a residence permit for the purpose employment cannot be granted. Additionally, a government decree<sup>17</sup> may specify the list of TCNs who may be granted a residence permit for the purpose of employment. This type of residence permit

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<sup>13</sup> Subsection (1) to (2) of Section 23 of Btátv.

<sup>14</sup> Subsection (1) of Section 24 of Btátv.

<sup>15</sup> Subsection (1) of Section 25 of Btátv.

<sup>16</sup> There is currently no such communication in force.

<sup>17</sup> There is currently no such government decree in force.

entitles the holder to stay in the territory of Hungary for a limited period of up to two years.<sup>18</sup>

d) A residence permit for guest workers may be granted to a guest worker whose purpose of residence is to perform actual work for or under the direction of others, for remuneration, under contract for employment relationship, including employment via temporary work agency, whose employer is registered as a preferential employer<sup>19</sup> or a qualified temporary work agency,<sup>20</sup> who are nationals of a third country as defined in a government decree,<sup>21</sup> and who undertake work under employment not precluded by the Communication from the minister responsible for employment policy.<sup>22</sup> This type of permit entitles the holder to stay in Hungary for a fixed term of up to two years.<sup>23</sup>

Irrespective of the purpose for which a TCN applies for a residence permit, the following conditions must be met in all cases: they must have a valid travel document; they must have the necessary permit for return or onward travel; they must have accommodation or residence in Hungary; they must have financial means to cover their subsistence and subsistence costs for the whole duration of their stay and the costs of departure; they must be insured for the full range of healthcare or be able to cover the costs of their healthcare.<sup>24</sup>

#### 4. SAP

Pursuant to Subsection (1) of Section 216 of Government Decree 35/2024 (II. 29) on the Implementation of Act XC of 2023 on the General Rules on the Entry and Stay of TCNs, the application for residence permits must be submitted by the TCN — as a rule — to the foreign representation of their nationality or habitual residence. However, it is also possible for the application to be submitted by the Hungarian employer based on the written consent of the guest worker.

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<sup>18</sup> Subsections (1) to (5) of Section 28 of Btátv.

<sup>19</sup> Preferential employers are: a) strategic partners of the government of Hungary; b) employers who are carrying out an investment of outstanding significance for the national economy of Hungary; and c) employers who qualify as a partner under the Outstanding Exporter Partnership Programme.

<sup>20</sup> Qualified temporary work agencies are: employers who are registered in the Registry of qualified temporary work agencies as defined in a government decree.

<sup>21</sup> These countries are defined by Government Decree 450/2024. (XII. 23.) as follows: Georgia, Armenia, Republic of the Philippines.

<sup>22</sup> Communication 2024/12 of the minister responsible for employment policy (so-called "negative employment list") excludes about 300 occupations out of a total of 485 occupations for the purpose of the residence permit for foreign workers (e.g. operator of tobacco machinery, police officer, firefighter, etc.).

<sup>23</sup> Sections 30 to 31 of Btátv.

<sup>24</sup> Information for employers and host organisations. NDGAP. [http://www.bmbah.hu/index.php?option=com\\_k2&view=item&layout=item&id=2237&Itemid=2462&lang=en](http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=2237&Itemid=2462&lang=en).

Applications for residence permits are examined by the NDGAP under the SAP. The SAP is a procedure for authorising a TCN's stay in Hungary for more than ninety days within a period of one hundred and eighty days and the establishment of an employment relationship between the applicant and a specific employer. A single permit is a residence permit that entitles a TCN to establish an employment relationship with an employer indicated on the permit and to reside in the territory of Hungary. In the SAP, in the first instance, the Government Office and, in the second instance, the minister responsible for the employment of TCNs in Hungary act as the competent authority to determine whether the employment of the TCN is supported by law. The following government office is competent to conduct the procedure: in principle, the competent government office where the TCN is employed; when the nature of the work is such that it may involve the territory of more than one county, the competent government office of the place where the work began; if the TCN is to be employed in several premises of the employer in different counties, the competent government office where the employer is based.<sup>25</sup>

Pursuant to Paragraph a) of Section 17 of Government Decree 445/2013 (XI. 28.), in the SAP for the issue and renewal of a single permit, the Government Office will issue an authority statement on whether it supports the employment of the TCN in Hungary in the job specified in the preliminary agreement. The preliminary agreement is concluded between the employer and the third-country worker to establish an employment relationship, the mandatory content of which is laid down in Subsection 8 of Section 7 of Act IV of 1991 on Job Assistance and Unemployment Benefits. For the Government Office to issue a supporting authority statement, the preliminary agreement submitted by the TCN must include, among other things, the activity to be performed by the TCN, job title (FEOR),<sup>26</sup> professional qualifications required to perform the job, remuneration, etc. In the preliminary agreement, the parties express their intention to apply for a work permit and, if the permit is granted, to enter into an employment relationship with each other under the terms and conditions already agreed.<sup>27</sup>

#### 4.1. The Procedure of The Competent Authority

The Government Office will support the employment of a TCN in Hungary in the job specified in the preliminary agreement if the following conditions are met: the TCN has the professional qualifications required for the job specified in the preliminary agreement; the employer has a valid labour demand for the activity to be performed by

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<sup>25</sup> Single application procedure. NDGAP. [http://www.bmbah.hu/index.php?option=com\\_k2&view=item&layout=item&id=2216&Itemid=2441&lang=en](http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=2216&Itemid=2441&lang=en).

<sup>26</sup> The standard classification of occupations (FEOR) classifies the occupations based on the professional nature of the activities considering skills and qualifications needed for the particular occupation.

<sup>27</sup> Szűcs, L. (2024). Vendégmunkások – az újragondolt szabályozás. *Munkajog* 3, pp. 68-69.

the TCN;<sup>28</sup> the employer has not received from the Government Office a Hungarian worker registered as a jobseeker who would meet the declared labour demand; and the TCN fulfils the conditions of employment laid down by law and specified in the employer's labour demand.<sup>29</sup> If these conditions are not met, the Government Office will not support the granting of a single permit in its authority statement.

Subsection (1) of Section 20 of Government Decree 445/2013 (XI. 28.) also specifies additional cases in which the Government Office issues a negative authority statement. One such rule is that the Government Office does not support the issuance of a single permit in its authority statement if the number of TCNs employed in Hungary with a residence permit for the purpose of employment and a residence permit for guest workers exceeds the number of persons specified in the Ministerial Decree.<sup>30</sup> Pursuant to Decree 8/2024 (II. 29.) of the Ministry of National Economy of Hungary, the maximum number of residence permits for the purpose of employment and residence permits for guest workers that may be issued in Hungary in 2024 is 65,000.<sup>31</sup> Currently, the number of these permits does not exceed this quota.<sup>32</sup> Furthermore, the Government Office will not support the issue of a single permit if the occupation specified in the preliminary agreement would be contrary to the prohibition set out in the ministerial communication (the above-mentioned "negative employment list").<sup>33</sup>

The Government Office may decide not to support the issue of a single permit in its authority statement based on "other employment considerations",<sup>34</sup> which are set out by way of example in Government Decree 445/2013 (XI. 28.). Other employment considerations include, for example, where the preliminary agreement provides for a substantially lower basic wage, including salary and remuneration, than the national average basic personal wage for the activity to be performed by the TCN. The basic salary, including salary and remuneration, indicated for the activity to be performed by the TCN will be considered to be substantially lower than the national average basic personal salary for that activity if it does not exceed eighty per cent of that average.<sup>35</sup> This shall be determined on the basis of the average gross earnings, by occupation, of full-time employees as measured by the HCSO.<sup>36</sup>

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<sup>28</sup> A labour demand is a demand for the performance by the employer of an activity in which the work is carried out in an employment relationship and which the employer has declared to the Government Office competent for the place of employment (Point 1 of Section 2 of Government Decree 445/2013 (XI. 28.)).

<sup>29</sup> Subsection (1) of Section 19 of Government Decree 445/2013 (XI. 28.).

<sup>30</sup> Paragraph b) of Subsection (1) of Section 20 of Government Decree 445/2013 (XI. 28.).

<sup>31</sup> Domány, A. (01 March 2024.). 65 ezer vendégmunkás jöhet 15 országból. *HVG (Online)*. [https://hvg.hu/gazdasag/20240301\\_vendegmunkas\\_Nemzetgazdasagi\\_Miniszterium\\_Kulgazdasagi\\_es\\_Kulugyminiszterium\\_Nagy\\_Marton\\_Magyar\\_Kozlony\\_gazdasag](https://hvg.hu/gazdasag/20240301_vendegmunkas_Nemzetgazdasagi_Miniszterium_Kulgazdasagi_es_Kulugyminiszterium_Nagy_Marton_Magyar_Kozlony_gazdasag).

<sup>32</sup> Zováthi, D. (13 March 2024.). NGM: itthon egyszer sem lépte át a kvótát a vendégmunkások száma. *Világgazdaság (Online)*. <https://www.vg.hu/vilaggazdasag-magyar-gazdasag/2024/03/ngm-itthon-egyszer-sem-lepte-at-a-kvotat-a-vendegmunkasok-szama>.

<sup>33</sup> Paragraph c) of Subsection (1) of Section 20 of Government Decree 445/2013 (XI. 28.).

<sup>34</sup> Subsection (4) of Section 20 of Government Decree 445/2013 (XI. 28.).

<sup>35</sup> Paragraph d) of Subsection (5) of Section 20 of Government Decree 445/2013 (XI. 28.).

<sup>36</sup> Full-time employees average gross earnings by occupation (HUF/person/month). HCSO. [https://www.ksh.hu/stadat\\_files/mun/en/mun0208.html](https://www.ksh.hu/stadat_files/mun/en/mun0208.html).

Government Decree 445/2013 (XI. 28) introduced a measure — specifically against bad faith measures by employers — that the application for a permit may also be rejected or the permit already issued may be revoked if the employer intends to employ a TCN instead of a Hungarian worker with a long-term employment contract without a legitimate reason. The employer is obliged to notify the Government Office of the place of employment within five days. The Government Office will consider whether the employer's termination was necessary and in good faith, or whether the purpose was to replace the Hungarian worker with a foreigner in bad faith, in circumvention of the labour law.<sup>37</sup>

## 5. The Dilemmas of Fixed-Term Employment

According to Act I of 2012 on the Labour Code (hereinafter: Labour Code), as a rule, employment contracts may be concluded for a fixed or indefinite period, depending on the objective of the employment relationship. This freedom does not extend to the employment of TCNs (which is by default fixed term), which can lead to various difficulties for employers.

Generally, the length of the employment relationship for a fixed-term will not exceed five years, including any extensions and any new fixed-term employment contracts concluded with the same employer within six months.<sup>38</sup> This provision is designed to protect the rights of employees. The Labour Code provides an exception to the general rule declaring that when an employment relationship is subject to official authorisation, the employment contract may only be concluded for the duration specified in the authorisation. If the authorisation is extended, the duration of the new fixed-term employment relationship may exceed five years together with the duration of the previous employment relationship.<sup>39</sup> TCNs, based on the ground of the long-term residence, may apply for an official authorisation for six months, two years or three years, as described above in Section 3; therefore, the duration of their fixed-term employment contract will be in line with the time set out in the authorisation.

The most significant difference between fixed-term and indefinite employment contracts is the regulation regarding termination, considering the stricter rules on the termination of fixed-term contracts. The rationale behind the stricter rules is the presumption that parties have legitimate interest regarding the continuance of the employment relationship until the expiration of the contract. The fixed-term employment contract will terminate at the end of the fixed term, upon termination by notice or without notice. The employer is permitted to terminate the fixed-term employment relationship by notice only on very limited grounds: in case of liquidation or bankruptcy proceeding; for reasons related to the employee's ability; or if maintaining the employment relationship is no longer possible due to unavoidable external reasons.<sup>40</sup> It must be noted that such termination by notice is possible within a more limited scope than termination by notice of an indefinite employment relation. For

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<sup>37</sup> Paragraph g) of Subsection (5) of Section 20 of Government Decree 445/2013 (XI. 28.).

<sup>38</sup> Subsection (2) of Section 192 of the Labour Code.

<sup>39</sup> Subsection (3) of Section 192 of the Labour Code.

<sup>40</sup> Subsection (8) of Section 66 of the Labour Code.

instance, while an employer could terminate an employment relationship for an indefinite period based on collective redundancy for economic reasons, a termination of a fixed-term relationship cannot be based on this reason, as it cannot be considered an external reason. It is also worth mentioning that while an employer could terminate an employment relationship for an indefinite period for a reason based on the employee's conduct or behaviour, termination by notice is not an available option for employers on that ground in case of fixed-term employment. Termination of fixed-term employment is based on the employee's conduct or behaviour and is possible only if that conduct or behaviour justifies termination with immediate effect.

In case of termination without notice, the Labour Code contains a special rule allowing the employer to terminate the employment without reasoning obligation, in which case the employee will be entitled to absentee pay due for twelve months, or, if the time remaining from the fixed period is less than one year, for the remaining period.<sup>41</sup> This option may impose a significant financial burden on the employer.<sup>42</sup>

Although the Labour Code does not differentiate, it is worth noting that in the case of employment without the need for authorisation the conclusion of a fixed-term contract is based on an agreement of the parties' free will, while for TCNs — given that the employment is subject to official authorisation — the conclusion of a fixed-term contract is based on a legal obligation. In this respect, it is arguable that while stricter termination rules are justified for contracts of indefinite duration concluded at the will of the parties, these stricter rules impose a disproportionate burden on employers in the case of TCNs, and this raises the need for special rules for employment subject to authorisation.

## 6. The Views of Social Partners

In 2023, trade unions strongly criticised the fact that the (later withdrawn)<sup>43</sup> regulation did not contain a provision on the involvement of social partners in the definition of the framework numbers and conditions of employment of guest workers.<sup>44</sup> The main criticism was that the legislation did not provide for a satisfactory procedure for proving how, when and under what procedure the employer had initiated the employment of Hungarian workers in the relevant field or for the relevant jobs before applying for a permit to employ guest workers. In their view, the legislation did not specify what the employer's declaration to that effect should contain and how and with what evidence it should prove that it had sought to employ Hungarian workers. There was also no adequate regulation on how the NDGAP would check the authenticity of the content of the declaration and what the legal consequences of any false declaration would be. The trade unions also considered the repeal of the legislation to be a success in its own right. The government then launched more substantive consultations with

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<sup>41</sup> Subsection (2) of Section 79 of the Labour Code.

<sup>42</sup> Lőrincz, Gy. (2020). A munkaviszony megszűnése és megszüntetése. In *A Munka Törvénykönyvének magyarázata*, edited by Petrovics Z., pp. 256-257. Budapest: HVG-ORAC.

<sup>43</sup> Act L of 2023 on the employment of guest workers in Hungary.

<sup>44</sup> Recital 12 of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011.

the social partners on the new regulation at the Standing Consultative Forum of the Industry and the Government (VKF).<sup>45</sup>

Trade unions asked for the inclusion of guarantees to protect Hungarian workers in the consultation on the legislation. Protection of Hungarian workers' labour rights is also supported by the law governing the control activities of the employment supervisory authority (i.e. the "labour inspectorate"), with an amendment harmonising it with the Btátv., which strengthens sanctions for the illegal employment of TCNs. The amendment also provides for a specific, increased labour penalty for breaching the obligation to notify the termination of the employment relationship of a guest worker,<sup>46</sup> thus supporting the work of the NDGAP, as the existence of an employment relationship is a condition for the validity of the residence permit. The new sanction<sup>47</sup> encourages employers to duly notify the termination of a legal relationship, so that the NDGAP can also obtain information on the validity or non-validity of a residence permit from the data of the labour inspectorate's checks.

Another important part of the strengthening of the sanctioning regime (as requested by trade unions during the consultations) is that the Btátv. increases the minimum and maximum — discretionary — amounts of the fine and removes the possibility of an unlimited reduction of the fine.<sup>48</sup> The legislation also provides for strict fines in cases where the employer employs the guest worker without a residence permit or under conditions other than those set out in the residence permit. The basis for the fines imposed by the labour authorities is five or ten times the minimum wage per worker concerned, but a public order fine may also be imposed for certain infringements, and in the case of repeated infringements, the employer may also face the risk that the authority will not issue a new residence permit for the guest worker to work for the employer for a period of two years from the date of the fine. The general attitude of trade unions towards the whole issue, mainly one of reticence, is fuelled by added fears of further relaxation of labour legislation and practice. Efforts to make labour law (particularly working time and rest period provisions) more flexible have intensified in Hungary particularly since the mid-2000s, when the current government's economic policy has viewed flexibility as a means of increasing competitiveness, linked

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<sup>45</sup> The VKF is an "informal" forum. It was established by the government at the end of 2011. Originally, only three employers' organisations (VOSZ, MGYOSZ, AFEOSZ) and three trade union confederations (LIGA, MSZOSZ, MOSZ) were invited to participate. VKF is intended to be a permanent tripartite social dialogue forum especially focusing on labour-related issues of the private sector.

<sup>46</sup> Government Decree 115/2021 (III. 10).

<sup>47</sup> In this case, the authority will impose a fine of HUF 5 million on the employer if it fails to comply with this obligation.

<sup>48</sup> Even though the fines have been increased many times over, heavy fines are worthless as the number of inspections has drastically decreased in recent years. Moreover, the majority of labour raids, even after detected offences, mostly end with a warning, a claim supported by the authority's own statistics, the Hungarian Trade Union Confederation (MASZSZ) said in a statement:

<https://maszsz.hu/hirek/152/szakszervezet,%20munka%20bcgyi%20ellen%205%91rz%20a9s,%20MASZSZ>.

to regional competition to attract more foreign capital.<sup>49</sup> The Labour Code, according to the unanimous opinion of the workers' representatives,<sup>50</sup> gives employers extreme flexibility in many respects, especially in terms of working time (and its allocation).<sup>51</sup> It is a common fear that, as labour law practices are quite different for third-country workers, employers are increasingly making use of the most flexible application of flexible working time rules, for example, by increasingly extreme merger of rest days (rest periods), which could also affect Hungarian workers (as a harmful, potential spillover effect).

Also at the request of employee representatives,<sup>52</sup> the role and powers of works councils in this area have been modified.<sup>53</sup> On this basis, the works council's right to give an opinion has been extended to include the obligation for the employer to consult the works council at least fifteen days before its decision to employ TCNs, if the number of TCNs employed by the employer reaches five per cent of the total number of employees and for any further increase of five per cent.<sup>54</sup> It must be underlined that expansion of collective labour rights (including workers' participation)<sup>55</sup> rarely happens in contemporary Hungarian labour law, so such a development can be evaluated as a rather big success of the trade union movement.

## 7. CSR/RBC Aspects of The Employment of TCNs in Hungary

It is a general experience that migrant workers are at a bigger risk of exploitation than average workers. These people frequently live in precarious and highly vulnerable situations, they are often to be found at the endpoint of the global supply chains (also in Hungary). Migrant workers face significant risks, notably linked to discrimination,

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<sup>49</sup> For more on the debate, see: Gyulavári, T. (2013). Út a rugalmasságba. In *Az új Munka Törvénykönyve dilemmái című tudományos konferencia utókiadványa*, edited by Kun, A., pp. 91-104. Budapest: Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar.

<sup>50</sup> Kiss, G. (05 February 2024.). Vendégmunkástörvény: a kormány egyelőre nem nyúl a "szent tehénekhez". *24.hu*. (Online). <https://24.hu/fn/gazdasag/2024/02/05/vendegmunkas-tulora-rabszolgorveny-munka-torvenykonyve-bumchun-munkajog-munkaltato-munkavallalo/>.

<sup>51</sup> Kun, A. (2023). Universal Labour Guarantee – The state of play of Hungarian labour law in view of the ILO's Universal Labour Guarantee. In *Reflections on the introduction of Universal Labour Guarantee in selected Central and Eastern European countries*, edited by Mihes, C. and Shroff, T., pp. 20-32. Geneva: International Labour Organization (ILO).

<sup>52</sup> Szabó, I.Sz (2024). Az üzemi tanács véleményezési jogkörének lehetséges bővítési irányai, különös tekintettel a munkaidő-szervezés egyes kérdéseire és a harmadik országbeli állampolgárok foglalkoztatására. *Munkajog* (1), pp. 30-32.

<sup>53</sup> Established by Article 16 of Act XXVIII of 2024. Effective from 11.05.2024.

<sup>54</sup> Paragraph o) of Subsection (2) of Section 264 of the Labour Code.

<sup>55</sup> Kun, A. (2023). Workers' representatives in selected Central and Eastern European countries: Filling a gap in labour rights protection or trade union competition?: The case of Hungary. In *Workers' representatives in selected Central and Eastern European countries: Filling a gap in labour rights protection or trade union competition?*, edited by Mihes C., pp. 50-61. Geneva: International Labour Organization (ILO).

marginalisation and job informality.<sup>56</sup> As a result, non-EU migrant workers are in desperate need of not only stable, protective legislative frameworks, but responsible employers and, on top of that, they are also in need of representation by workers' representatives, trade unions, especially to fight against the insecurity of their working conditions, as highlighted in Section 6 of this paper.

Employers, especially multinational companies, should be held responsible for the role they play in the employment of TCNs. This responsibility stems not only from the legislative frameworks, but also from the increasingly evolving global — hard and soft — normative frameworks of CSR/RBC. The broad principles of CSR and RBC are set out in various global standards including the UN Guiding Principles on Business and Human Rights (hereinafter: UNGPs), which recognise the responsibility of companies to exercise human rights due diligence by identifying, preventing and mitigating the adverse impacts of their operations on human rights and by accounting for how they address those impacts. The UNGPs state that businesses should avoid infringing human rights and should address adverse human rights impacts that they have caused, contributed to or are linked with in their own operations, those of their subsidiaries and through their direct and indirect business relationships. The concept of human rights due diligence was specified and further developed in the Guidelines for Multinational Enterprises (hereinafter: MNE Guidelines) of the Organisation for Economic Co-operation and Development (hereinafter: OECD). The concept of due diligence is also embedded in the International Labour Organization's (hereinafter: ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

The day-to-day, pragmatic operationalisation of the broad principles of CSR/RBC is a challenge.<sup>57</sup> How companies should fulfil their due diligence obligations in specific situations in a practical manner is supported by various standards and guidelines. For instance, specifically related to migration, the International Organization for Migration's (hereinafter: IOM) Fair and Ethical Recruitment Due Diligence Toolkit was developed to support business enterprises in fulfilling their responsibility to respect human rights in the context of international recruitment.<sup>58</sup> It provides practical tools that enterprises can use to conduct comprehensive due diligence in line with related international CSR/RBC standards (and also the IOM's Migrant Worker Guidelines. It can be used by enterprises to develop or strengthen due diligence processes in directly recruiting and managing business relationships with labour recruiters and private

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<sup>56</sup> OECD (2022). Stocktaking Report on the OECD Guidelines for Multinational Enterprises. <https://mneguidelines.oecd.org/stocktaking-exercise-on-the-oecd-guidelines-for-multinational-enterprises.htm>.

<sup>57</sup> Kun, A. (2018.). How to operationalize open norms in hard and soft laws: Reflections based on two distinct regulatory examples. *International Journal of Comparative Labour Law and Industrial Relations* 34 (1), pp. 23-51.

Kun, A. (2020). The potentials of human rights due diligence for transnational labour law. In *Obrana pracovného práva. The Defence of Labour Law*, edited by Pichrt, J. and Koldinská, K. and Morávek, J., pp. 521-532. Praha: C.H. Beck.

<sup>58</sup> IOM, Fair and Ethical Recruitment Due Diligence Toolkit. <https://www.iom.int/fair-and-ethical-recruitment-due-diligence-toolkit>.

employment agencies that place migrant workers. The Toolkit contains detailed guidelines and practical recommendations on how the due diligence processes described in the UNGPs can be operationalised. The tools include interactive features that will direct users to the next due diligence process or the corresponding actions that are recommended for them to take.

The OECD MNE Guidelines note that "enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk of adverse impacts than others in particular industries or contexts, and therefore will be the focus of heightened attention." In such situations, enterprises may need to consider "additional standards". For instance, migrant workers (and their families) belong to this category.<sup>59</sup> In other words, migration policies and employment of migrant workers are issues which are particularly relevant to RBC.<sup>60</sup> This approach is especially important in countries where default labour laws are rather flexible (such as in Hungary, as described above in Section 6). It must also be noted that National Contact Points for RBC (NCP) also serve as nonjudicial grievance mechanisms under the OECD MNE Guidelines. The case law of the OECD MNE Guidelines<sup>61</sup> — a unique implementation mechanism — has also dealt with several specific instances<sup>62</sup> where the rights of migrant workers were at stake.<sup>63</sup> For instance, in such landmark cases as the "FIFA case",<sup>64</sup> in May 2015, the international trade union federation Building and Wood Workers' International submitted a specific instance to the Swiss NCP alleging that the Fédération Internationale de Football Association (FIFA) had not observed the MNE Guidelines' chapters on General Policies and Human Rights. The issues concerned a series of violations of migrant workers' human rights related to the construction of facilities for the FIFA 2022 World Cup in Qatar. The Swiss NCP's mediation services resulted in an agreement around five areas, including identification and use of FIFA's leverage on relevant actors in Qatar and

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<sup>59</sup> OECD (2023). OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Paris: OECD Publishing. pp. 26. <https://doi.org/10.1787/81f92357-en>.

<sup>60</sup> See also: Ferstman, C. (2020). Human Rights Due Diligence Policies Applied to Extraterritorial Cooperation to Prevent "Irregular" Migration: European Union and United Kingdom Support to Libya. *German Law Journal* 21 (3), pp. 459-486.

<sup>61</sup> OECD, The NCP Database of Specific Instances. <https://mneguidelines.oecd.org/specificinstances.htm>.

<sup>62</sup> See also, concerning to alleged breaches of the OECD MNE Guidelines by British American Tobacco (BAT) concerning the quality of living and working standards for migrant workers in the tobacco industry, Final statement: IUF and FLOC complaint to UK NCP about BAT, Published 2 December 2019. <https://www.gov.uk/government/publications/iuf-and-floc-complaint-to-uk-ncp-about-bat/final-statement-iuf-and-floc-complaint-to-uk-ncp-about-bat>.

<sup>63</sup> Kun, A. (2020). A migráns munkavállalók alapvető emberi jogai és a vállalati szféra felelőssége a transznacionális munkajog újabb fejleményei tükrében. In *Tanulmányok a személyek határokon átnyúló munkavégzésének munkaerőpiaci foglalkoztatáspolitikai és munkajogi kihívásai kutatásból*, edited by Berke, Gy. and Kiss, Gy. and Bankó Z., pp. 104-119. Pécs: Pécsi Tudományegyetem Állam- és Jogtudományi Kar.

<sup>64</sup> Haar, B.T. (2018). FIFA, Qatar, Kafala: Can the World Cup Create a Better World of Work? *International Labor Rights Case Law* 4 (1), pp. 128-132.

establishment of a complaint mechanism for workers. FIFA accepted its responsibility to mitigate risks.<sup>65</sup>

It must be noted that in the EU, the new directive on "corporate due diligence for sustainability purposes" provides for a special context and new impetus for CSR/RBC. On 25 July 2024, the directive on corporate sustainability due diligence<sup>66</sup> entered into force. The directive follows the global standards mentioned above and the attempts by some national legal systems to transfer the concept of due diligence to the level of hard law.<sup>67</sup> The directive obliges large companies to create a risk management system against social and environmental externalities related to their activities along the entire global supply chain, requiring states to adopt monitoring and control mechanisms and a system of sanctions. The aim of this directive is to foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains. The new rules will ensure that companies in scope identify and address adverse human rights and environmental impacts of their actions inside and outside Europe. "Migration status" is specifically mentioned in Preamble (33) of the directive, noting that in specific contexts, "depending on the circumstances, companies may need to consider additional standards". In such scenarios, companies should pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability or other circumstances, individually or as members of certain groupings or communities. It must be recognised that TCN workers typically fall into such a category, so a further elaboration and operationalisation of this legal obligation can and should be a special way forward in the protection of migrant workers.

In recent years, there has been a growing recognition that governments play a key role in promoting RBC standards and in supporting its effective implementation by providing an enabling policy environment, creating incentives and exemplifying RBC in their own activities. To address this need, the OECD Council adopted the Recommendation on the Role of Government in Promoting Responsible Business Conduct on 12 December 2022.<sup>68</sup> The Recommendation lays out a set of 21 principles and policy recommendations to assist governments, other public authorities and relevant stakeholders in their efforts to design and implement policies that enable and promote RBC. Among others, the document recommends that governments encourage RBC across relevant policy areas, including by aligning economic benefits and incentives for business with the implementation of RBC standards, promoting RBC through trade

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<sup>65</sup> OECD (2020). Providing access to remedy: 20 years and the road ahead. <https://mneguidelines.oecd.org//ncps/ncps-at-20/>.

<sup>66</sup> Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

<sup>67</sup> Giovannone, M. (2024). The European directive on 'corporate sustainability due diligence': the potential for social dialogue, workers' information and participation rights. *Italian Labour Law E-Journal* 17 (1), pp. 227-244.

<sup>68</sup> OECD. OECD Recommendation on the Role of Government in Promoting Responsible Business Conduct. <https://mneguidelines.oecd.org/oecd-recommendation-on-the-role-of-government-in-promoting-rbc.htm>.

and investment policies, as well as bilateral and multilateral agreements. This should include the expectation that businesses under the scope of these policies and agreements implement RBC standards. In our view, migration policies and employment of migrant workers are issues which should be considered in this context.

In Hungary, CSR- and RBC-related policies are rather weak, especially at the state level.<sup>69</sup> Institutionally speaking, the Hungarian National Contact Point (HNCP) for the MNE Guidelines is the most relevant governmental actor in the field. The HNCP started operating within the governmental structures in 2000 and is currently operating under the auspices of the Ministry of Finance. The HNCP was established by Government Decree 245/2017 (VIII.29) on the publication of the amended Council Decision C(2000)96/FINAL of 25 May 2011 on the OECD MNE Guidelines. Accordingly, government officials employed by the central state administration body were delegated as members of the HNCP.<sup>70</sup>

The HNCP is obliged to promote and raise awareness of RBC in general and the MNE Guidelines and their implementation procedures more specifically. It must be noted that the results of the peer review conducted on the operation of the HNCP (which took place in October 2023, jointly organised by the OECD Secretariat and the Ministry of Finance) clearly points out that the HNCP must strengthen its visibility and accessibility; moreover, it must establish a structured dialogue with individual civil organisations and promote the realisation of governmental coherence and the promotion of the MNE Guidelines among government actors.<sup>71</sup> The peer review also noted the following: "The current national policy of attracting foreign direct investment (FDI) in high-risk sectors, such as battery production, and of attracting third country workers refers to domestic labour law provisions. It does not integrate an RBC or due diligence component that would allow to address risks identified for each sector or for specific social groups. Indicatively, information on the Guidelines and the due diligence framework is not provided to foreign investors invited to operate in Hungary."<sup>72</sup>

The potential of the HNCP could certainly be better utilised also to promote RBC in the circle of multinational companies and recruitment agencies in the context of employment of TCN migrant workers in Hungary. This could be among the many potential methods to further the development of the HNCP. The NCP could support the government in ensuring that its policy of attracting foreign direct investment supports implementation of the MNE Guidelines and, notably, contains a component of informing foreign investors of expectations to respect the MNE Guidelines, in particular protection of migrant workers.<sup>73</sup> "As trade and investment policies and agreements are a key component of an enabling environment to drive, support, and promote responsible business practices, the NCP could play a role in ensuring that these

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<sup>69</sup> Kun, A. (2010). CSR in Hungary. In *World Guide to CSR, CSR International*, edited by Visser, W., pp. 177-185. Sheffield: Greenleaf Publishing.

<sup>70</sup> OECD, The Hungarian National Contact Point, <https://oecdlnkp.hu/en>.

<sup>71</sup> National Contact Point for Responsible Business Conduct Peer Reviews: Hungary, OECD 2024. <https://oecdlnkp.hu/en/the-results-of-the-peer-review-conducted-on-the-operation-of-the-hungarian-national-contact-point-are-now-officially-available>.

<sup>72</sup> Ibid. 11.

<sup>73</sup> Ibid. 11.

policies contribute to enabling RBC. Moreover, these policies are an opportunity to directly promote RBC with businesses and contribute to shape their conduct in Hungary and abroad."<sup>74</sup>

To mention only one possible, innovative policy example, in Croatia it was proposed that the law could regulate that procedures for recruiting foreign workers are simpler and faster for employers where a collective agreement is applied (especially sector-level collective agreement). The idea is that working conditions in these companies are more regulated, and there is a mechanism for controlling and supervising the rights of workers (usually by the union).<sup>75</sup>

In conclusion, given the new regulatory framework of immigration in Hungary (as described above) and the often, generally vulnerable situation of TCN migrant workers, the government should better promote various standards of CSR/RBC and human rights due diligence among employers of such workers in Hungary, especially multinational enterprises and temporary work agencies. Among others, the HNCP for the MNE Guidelines could be the centre of this promotional activity (in cooperation with other stakeholders, including, especially, social partners, the Hungarian Chamber of Commerce and Industry and various business associations of multinational enterprises in Hungary).

## 8. Conclusion

This paper discusses the challenges and legislative responses related to the employment of TCNs in Hungary. As Hungary faces increasing labour demands, especially in manual labour sectors, the number of migrant workers from non-EU countries has increased significantly. This trend has necessitated a new legal framework to manage migrant workers' stay and employment.

As of 1 January 2024, Act XC of 2023 regulates the entry, stay and employment of TCNs, categorising residence permits based on the duration of stay. This Act outlines different types of permits, including residence permit for the purpose of seasonal employment, residence permit for employment for the purpose of investment, residence permit for the purpose of employment and residence permit for guest workers.

Applications for residence permits are examined by the NDGAP under SAP. In the SAP (in the first instance), the Government Office acts as the competent authority. The Government Office reviews applications to ensure compliance with labour market needs and legal requirements.

Once the permit is issued, only a fixed-term employment contract may be concluded with the TCN. Fixed-term employment of TCNs is strictly regulated, with contracts linked to the duration of their residence permit. As the rules on termination are stricter than for contracts of indefinite duration, this can impose a financial burden on employers. Hungarian trade unions have expressed concerns about the protection

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<sup>74</sup> Ibid. 41.

<sup>75</sup> Bagić, D. (2024). Croatia, In *Time for action! How policy can strengthen (multi-employer) collective bargaining in Europa*, edited by De Spiegelaere, S., pp. 14-19. Brussels: UNI Europa – The European Services Workers Union.

of domestic employees' rights and called for safeguards against potential exploitation and unfair labour practices. The legislation has incorporated some measures to address these issues, including stricter penalties for unlawful employment practices.

This paper also emphasises the potential importance of CSR and RBC in the employment of TCNs, highlighting the risk of exploitation and the need for businesses, especially multinationals, to respect international human rights and RBC standards. The EU's new directive on corporate sustainability due diligence is also discussed, aiming to enforce responsible business practices across global supply chains. Better promotion and enforcement of CSR/RBC standards in the context of the employment of TCNs can greatly contribute to ensuring fair treatment and protection of migrant workers.